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POLITICAL CHANGE NORTH OF 60°

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ISSUE DEFINITION

The Yukon and Northwest Territories have been undergoing considerable political change in the past decade. Governmental and administrative processes have been transformed, and the question of evolution towards provincial status is now frequently raised. This issue has received particular attention lately because of the provisions of the 1987 Meech Lake Constitutional Accord concerning the creation of new provinces. The possibility of dividing the Northwest Territories between east and west, into Nunavut and Denendeh, has also been a focus of concern throughout the 1980s. Political change is inextricably linked to the economic development of the north, the settlement of native land claims and the establishment of self-government, though space permits only a brief discussion of those issues in this review.

BACKGROUND AND ANALYSIS

A. Responsible Government

The territories, ironically, were closer to having full responsible government in the past than they are at present. The Yukon was established as a separate territory in 1898, with an appointed commissioner and a six-member council of advisers, who were also appointed. Elected members were gradually included; all Yukon council members were elected by 1908. The commissioner, council, and territorial administration were located in the Yukon, and provincial status was seen as imminent. With the

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collapse of the Klondike boom, however, the Yukon population declined sharply and, by the end of World War I, the territory was almost completely run by the commissioner appointed by the federal government.

The original Northwest Territories included the present N.W.T. as well as what are now the Yukon, Alberta and Saskatchewan. They had a fully-elected assembly in 1881 and responsible government from 1897. In 1905, however, when the provinces of Alberta and Saskatchewan were created, the rest of the N.W.T. returned to colonial status, being ruled by a commissioner and public servants residing in Ottawa. A six-member council was appointed in 1921 to advise the commissioner, but its members also lived in Ottawa. Absentee rule continued until 1951 when the first session of the territorial council was held in the north with elected members from the Mackenzie Valley area. The first three eastern Arctic ridings were created in 1966. In 1965, the "Carrothers Commission," an Advisory Commission on the Development of Government in the N.W.T., was established. As a result of its recommendations, the territorial council was increased in 1967 to 16 members, some elected and some appointed, and the territorial government was moved to Yellowknife. The N.W.T. had its first fully-elected legislative assembly in 1975.

In the 1980s, the formal constitutional status of both territories in relation to the federal government is similar to that of municipalities in relation to provincial governments. In reality, however, they now have considerable autonomy and are closer to de facto responsible government. In 1979, the Honourable Jake Epp, then Minister of Indian Affairs and Northern Development, instructed the Yukon Commissioner to appoint a Cabinet on the advice of the Government Leader, to accept its advice and not to participate in Cabinet. Since then, the Commissioner has functioned in effect like a lieutenant-governor. At almost the same time, in the 1978 elections, party politics was introduced in the Yukon; independents won only two of 16 seats in 1978, one in 1982, and none in 1985. The Executive Council is now selected strictly on a party basis and operates as though the assembly had the same power to vote non-confidence in the government as a provincial legislature.

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The N.W.T. Legislative Assembly has also progressed towards responsible government, though less rapidly than that of the Yukon. The commissioner now plays the "lieutenant-governor" role of the Yukon commissioner. Administrative portfolios rest in the hands of the members of the Executive Council, whom the elected members of the assembly choose from among themselves. The important obstacle to full responsible government in the N.W.T. Legislative Assembly is the absence of a party system. The assembly operates through what has been termed "consensus government," though "non-partisan" government may be a more accurate phrase. There is no collective responsibility of the executive and no clear procedure for voting non-confidence in the government, though individual executive members can be dismissed by vote of the assembly. On specific issues, however, there are often clear lines of division: between eastern arctic and western arctic or native and non-native. In addition, many MLAs are identified with, and active in, political parties at the federal level, so it seems probable that territorial elections will eventually be fought on party lines.

The assemblies of the two territories reflect the ethnic makeup of their populations. As of the 1981 census, when 1.7% of the overall Canadian population was of native origin, the roughly 23,000 Yukon population included slightly over one-quarter who were Indian or Métis. After a 1987 by-election, there were five native members in the 16-member Yukon assembly, one of whom was chosen as Speaker and two others who are in the Cabinet. The N.W.T. population of approximately 46,000 at the time of the 1981 census consisted of 17% Dene (Indian), 35% Inuit, 6% Métis and 42% non-native. In the 1984 N.W.T. election, six of the 24 MLAs returned were Dene, eight were Inuit and 10 were non-natives. In 1987, 15 of the 24 were Dene, Inuit or Métis, though a non-native, Dennis Patterson, was elected as Government Leader. The result is that, especially in the N.W.T., native issues have been at the forefront of political concern in the territorial assemblies in the 1980s.

The territories have evolved administratively as well. Their governments now have responsibility for program delivery in social services, small-business development, education, tourism, and most

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development of renewable resources. Non-renewable resource development and land-use planning, however, remain in the control of the federal government. Federal grants and transfers account for approximately 60% of the Yukon budget and 80% of the budget of the N.W.T., but much of the program administration is local. The Yukon bureaucracy is very similar to that of a provincial government but the N.W.T. bureaucracy differs: it is highly decentralized, in recognition of the vast territory which must be administered, and it has a policy of "indigenization" of the public service.

B. Future Political Development

Future political development in the north involves two critical processes of evolution: the efforts to achieve a division of the N.W.T. into eastern and western arctic political jurisdictions, and progress towards either provincial status or some other less "colonial" formal governmental structure than that which currently obtains in the territories. Both of these processes are inextricably linked to northern economic development and to the ongoing negotiations over land claims and aboriginal self-government. Future economic development is said to be essential if future northern provinces are to be economically viable and if their provincial status is to be acceptable to southern provinces. The nature, direction and locus of economic development is critical to agreement on the dividing line between the eastern and western arctic. The nature and control of development is central to land claims and self-government negotiations.

In the Yukon, the NDP government led by Tony Penikett undertook an extensive consultation process during 1988 with an emphasis on involvement of communities and social sectors in economic development and renewal. The final report, Yukon 2000, was released in April 1988 and focused attention on links between various sectors of the economy and specific principles to guide social and economic development of the territory. It also reported on the government's actions and plans for economic development. These community-based plans, to the extent that they encourage future economic progress, could also further stimulate the development of a base for further political change in the Yukon.

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On 2 August 1988 the federal Department of Indian Affairs and Northern Development released its own report, "A Northern Political and Economic Framework." The primary goals established in the policy framework are: developing fully responsible northern governments through the transfer of federal programs to the territorial governments; settling native land claims in the north; promoting economic development; and enhancing Canadian sovereignty in the north. The opportunities for and obstacles to fulfilling this ambitious agenda were discussed at the 11th National Northern Development Conference held in Edmonton in late October.

It is clear that the outcome of aboriginal self-government negotiations and land claims settlements will affect in turn many other elements in the development equation. The self-government issue by itself may well determine the constitutional status of the territories, especially the N.W.T., for many years to come. Settlement of the political rights of native peoples could either provoke insistent demands for provincial status, especially in the eastern arctic, or render that issue irrelevant. Decisions on land will include decisions on resource control, which will dramatically affect both the direction of future economic development and the question of who benefits from it. Financial settlements will affect the viability not just of native communities but also of potential provinces or regional authorities. It should also be noted that the various claims by the Council of Yukon Indians in the Yukon and the Inuvialuit (western arctic Inuit), Dene, Métis and Inuit in the N.W.T., come from quite different visions of the future for their societies, economies and politics. Negotiations have been deadlocked for some time on the issue of the land claim boundary between the Dene/Métis and eastern arctic Inuit settlement areas. It is in this context that the issues of future constitutional development and division of the N.W.T. should be viewed.

In the Yukon, the land claim of the Council of Yukon Indians is close to settlement after many years and frustrating setbacks. The framework agreement accepted by Indian leaders in December 1988 was ratified by the Yukon government in January 1989 and by the federal Cabinet in March 1989. This is the last step before reaching final agreement. The

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critical issue of self-government remains a difficult one, however. In the N.W.T., negotiations are ongoing with the Tungavik Federation of Nunavut (TFN), with a number of sub-agreements initialled to date. In addition, on 5 September 1988, the Prime Minister signed an agreement in principle with the Dene and Métis of the western arctic, giving them ownership and subsurface mineral rights to 10,000 square kilometres of land; $500 million in cash compensation to be paid over 20 years beginning in 1990; and special rights in an additional 180,000 square kilometres of land including a voice in land, wildlife and water management decisions. Aboriginal title and self-government were not included in the agreement. They are to be negotiated between native leaders and the government over the next two years. The very next day, on 6 September, Ottawa and the N.W.T. concluded a second landmark agreement in principle under which the territorial government will assume province-like powers over the management of oil and gas development. Stated N.W.T. Government Leader Dennis Patterson: "We have achieved another milestone, perhaps the most significant in our evolution toward provincial status." Some native groups protested, however, that they had not been adequately consulted. On 22 September the Yukon signed its own energy accord with Ottawa. The NDP government, re-elected with a majority on 20 February 1989, has resolved as well to press ahead with a final settlement of Indian land claims.

C. Provincial Status

The issue of provincial status for the territories has sparked considerable controversy in recent years and is very much on the agenda at the moment because of the 1987 Constitutional Accord. The Accord, which has been ratified by eight provincial legislatures and the federal Parliament, provides that admission of future provinces into Confederation would require unanimous approval of the existing provinces and the federal government. Territorial governments, opposition members and lobby groups are united in their opposition to this new barrier to possible future provincial status. They voiced their opposition loudly to the Senate Task Force on the Constitutional Accord during its hearings in

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Whitehorse, Yellowknife and Iqaluit last October and November, as they had done at the hearings of the Special Joint Committee on the Constitutional Accord during the summer. Early in 1989 several northern leaders journeyed as far as New Brunswick to reiterate their unhappiness with Meech Lake before a committee of that province's legislature.

Both of the territorial governments launched court challenges to the 1987 accord. The Yukon government received a favourable preliminary ruling from the Yukon Supreme Court in August 1987. The Yukon Court of Appeal (which is actually the British Columbia Court of Appeal, sitting in Vancouver) overturned that ruling. The N.W.T. challenge was approved by the N.W.T. Supreme Court in December 1987. Ottawa's appeal, which was heard in Edmonton, resulted in rejection of the N.W.T. lawsuit by the Court of Appeal on 28 January 1988. In June 1988 the Supreme Court refused to hear an appeal by the territorial governments, putting an end to any legal solution to the issue.

The bitter reaction of all parties and sectors of the communities of the north to a severe barrier to future provincehood is understandable. There is considerable debate, however, over the desirability of provincial status for the territories. The arguments against provincehood are simple and straightforward:

- The territories have very small populations and a small resource base available for taxation.
- The territories, under the present equalization formula, would not qualify for equalization grants but, on the other hand, would require substantial subsidization from the federal government because of their high operating costs. If they became provinces, they would require special treatment in equalization unless provincial status was delayed until megaproject developments in the north provided a better tax base and larger population.
- The entry of the territories as provinces would upset the balance of the constitutional amending formula, which requires agreement of the federal government and of at least seven provinces representing at least 50% of the Canadian population.

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On the other hand, there are equally straightforward arguments in favour of promoting provincial status for the north:

- Northerners are people too; it is time to end colonial domination and second-class status.
- Prince Edward Island, which also has a small population and tax base, already has a potential veto over future provincial status of the territories (under the Accord).
- The financial issue is fallacious - the territories do indeed currently need substantial subsidies from the federal government to meet operating expenses and provide services, but they are also currently receiving those subsidies; their continuing to receive subsidies from the federal government under the rubric of equalization should not be offensive to the provinces, as they would not be paying them (except in the sense that their taxpayers pay federal taxes, which they would continue to do).
- The territories already effectively exercise most of the powers of provincial governments, though without the requisite constitutional authority.
- The constitutional amendment provision concerning provinces with "at least 50% of the population of Canada" could hardly be affected by the addition of provinces with, in total, less than 1% of the population. The addition of as many as three new provinces would, it is agreed, require some change in the amending formula, which requires approval of seven provinces; however, the Yukon is more politically and economically developed than the N.W.T., and admission of the Yukon alone should not be a problem in this regard.

While these are the polar positions in the dispute, a balanced view should reflect several realistic concerns. First, it is not at all clear that the citizens of the territories want provincehood. Native groups want to settle the issues of land claims and self-government before considering whether provincehood would be preferable to other self-government structures. White communities are divided on the question of their readiness, especially economic readiness, for provincial status, though the Yukon white population is more in favour of it than that of the

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N.W.T. Without substantial megaproject development, changes to the equalization formula, or some constitutionally-entrenched special economic status for the north (inevitably resisted by the south), it is very unlikely that the northern provinces could afford to continue to provide current levels of governmental service.

Provincial status need not be viewed as an either/or question. It is possible for the territories to continue to develop towards provincial status, gradually assuming more powers and responsibilities from the federal government as they are ready and willing to do so. Resolutions of land claims and self-government issues can serve as steps along that road. The two territories - or three if the N.W.T. should be divided - may take different forks on that road, and probably should, since they do differ. But southern efforts to establish roadblocks, such as the provisions of the 1987 Constitutional Accord, will inevitably be met with northern resistance, and perhaps speed the progress of northern development.

D. Division of the N.W.T.

Division of the N.W.T. has been an issue since the early 1960s. The inhabitants of the Mackenzie Delta proposed division in that period because they felt their political development was being delayed by a low level of political sophistication in the eastern arctic. The Carrothers Commission recommended against the division, however, to avoid slowing down development in the eastern arctic.

The issue arose again in the late 1970s, with a proposal by the Inuit Tapirisat of Canada for creation of a new territory, Nunavut, approximating the area above the tree line. Nunavut would have a government with powers similar to those of the present N.W.T., but with additional powers over land-use planning and control. Because Inuit would comprise approximately 80% of the population of Nunavut, creation of the new territory would, in effect, establish self-government for the Inuit.

The initial federal government response was the Drury Report, the Report of the Special Representative on Constitutional Development in the Northwest Territories. Commissioned at the request of

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the Prime Minister and released on 6 March 1980, the report recommended further study by the government and peoples of the N.W.T. of the consequences of any decision to divide the territory and drew attention to the connection between territorial division and land claims settlements.

In 1980, the Legislative Assembly of the N.W.T. gave approval in principle to division of the territory. Two years later, a territorial plebiscite was held on the issue. A majority of the voters, 56%, supported division, but that included 82% support in the eastern arctic; turnout in the western part of the territory was very low and considerably less favourable. Given majority support in the N.W.T., however, in November 1982 the Minister of Indian Affairs and Northern Development announced approval in principle for the creation of Nunavut. Ottawa also established two regional constitutional groups to work on agreement on the division process: the Nunavut Constitutional Forum (NCF), predominantly Inuit, in the eastern arctic, and the Western Constitutional Forum (WCF) -- mixed Dene, Métis and white -- in the western arctic.

The federal government's approval in principle of division was subject to four conditions, all of which would have to be met before action would be taken:

- The boundary of Nunavut must be agreed upon by the people of the N.W.T.
- All of the people of the N.W.T. must support the division.
- Native claims in the N.W.T. must be settled before division.
- There must be agreement on the appropriate distribution of authority among local, regional and territorial governments.

These conditions raised numerous problems in subsequent years of negotiations between the NCF and WCF. Their initial boundary proposals differed sharply because of their disparate perceptions of traditional land-use patterns, communication and transportation links, and economic viability. The most bitterly-disputed area was access to the Beaufort Sea and its potential oil development. There were also problems with overlapping land claims. In addition, the Inuvialuit people of the western arctic, inhabiting the communities on the Beaufort Sea, desired some recognition of their unique status and political autonomy through creation of a Western Arctic Regional Municipality (WARM). A two-fold

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issue is therefore created: what would be the powers of WARM and should it be included in Nunavut or in the western territory, Denendeh?

The attraction of the Nunavut proposal for the Inuit people of the eastern arctic is obvious. It gives them effective political control of their homeland. The proposal, however, was criticized for several possible undesirable consequences:

- Nunavut might not achieve the goal of creating a pan-Inuit homeland. The Inuvialuit of the western arctic have clear ties to the Mackenzie Valley and might well opt to include WARM in Denendeh rather than Nunavut.
- The present strength of the N.W.T.'s native peoples, which allows them collectively to control a majority in the N.W.T. Assembly, would be fragmented. Native peoples would be a minority in Denendeh.
- Two smaller, less populous territories would be weaker in their dealings with Ottawa and the southern provinces.

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- Government would be more costly and less efficient and northern public administration less effective.

Because of these problems, the discussions, negotiations and debate between the NCF and WCF continued for almost five years. Finally, in January 1987, the Dene and Inuit negotiators reached an agreement to divide the N.W.T., and the Minister of Indian and Northern Affairs announced his support for the agreement. The NCF and WCF planned a new referendum on division for the spring of 1987. Further talks to settle the boundary line broke down, however, over the area around the Manitoba-Saskatchewan border and the issue of development of mineral resources on the east arm of Great Slave Lake, where land claims overlap. The referendum was never held.

Talks resumed in October 1987 and the two sides continue to discuss the boundary, under some pressure because there is movement on land claims settlements which will affect the boundary dispute. Both sides, however, are facing financial problems. In January 1988, each forum was allotted approximately $180,000 "ratification money" to conclude the agreement and finance the referendum campaign. No further funding could be allocated from Ottawa until announcement of the date of the referendum. In spring 1988 the N.W.T. government reconstituted the two organizations as one integrated constitutional forum and granted interim funding to continue the negotiations. **In January 1989, after further deadlock, the Tungavik Federation of Nunavut asked for binding arbitration on the land claim boundary with the Dene/Métis.**

PARLIAMENTARY ACTION

In October 1983, the Special Committee of the House of Commons on Indian Self-Government in Canada noted in its Report that the situation of native peoples in the territories was very different from that which prevailed in the provinces. The Committee also observed the links between land claims, aboriginal self-government, and ongoing discussions of the constitutional status of the territories.

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In October 1987, the House of Commons voted in favour of the resolution on the 1987 Constitutional Accord. In October and November, the Senate Task Force on the Constitutional Accord held hearings in Whitehorse, Yellowknife and Iqaluit. In February 1988, the task force tabled its report in the Senate. The Liberal members of the task force, constituting the majority, unanimously supported the recommendations in the report and the Conservative members unanimously dissented. Those recommendations were that:

- the provisions of the Constitutional Accord which give the provinces a say in appointments to the Senate and the Supreme Court should also be extended to the territorial governments;
- the Accord should be amended to require that representatives of the territorial governments be invited to participate at all future constitutional conferences on the constitution and on the economy;
- any change in boundaries between the provinces and territories must have the consent of the territory concerned;
- attainment of provincial status by the territories should be subject only to the approval of the federal government and the territory concerned;
- aboriginal and treaty rights and the issue of self-government should be added as continuing items to the agenda of future constitutional conferences;
- aboriginal peoples of Canada should be recognized as constituting distinct societies.

On 21 April 1988, the Senate returned the constitutional resolution on the "Meech Lake" Accord to the House of Commons with amendments which included all those recommended by the Task Force on the Meech Lake Constitutional Accord and on the Yukon and the Northwest Territories. The Senate has no veto power over the Constitutional Accord, however, and the Accord did receive parliamentary approval when the House of Commons passed the resolution once again in its original form on 22 June 1988.

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CHRONOLOGY

1881 - Fully-elected assembly in N.W.T.

1897 - Responsible government in N.W.T.

1898 - Yukon established as a separate territory.

1905 - Alberta and Saskatchewan separated from N.W.T. and made provinces. The rest of the N.W.T. reverted to colonial status ruled by a commissioner and public servants in Ottawa.

1908 - Fully-elected council in Yukon.

1921 - A six-member council, based in Ottawa, appointed to advise the N.W.T. commissioner.

1951 - First session of N.W.T. council held in the territory with some elected members.

1965 - The "Carrothers Commission," an Advisory Commission on the Development of Government in the N.W.T., was established.

1966 - In the N.W.T., the first three elected eastern arctic ridings were created.

1967 - As recommended by the Carrothers Commission, the N.W.T. Council was increased to 16 members, some elected and some appointed, and the territorial government was moved to Yellowknife.

1975 - First fully-elected N.W.T. Legislative Assembly.

1978 - Party politics introduced in Yukon elections.

1979 - The Minister of Indian and Northern Affairs instructed the Yukon Commissioner to appoint a Cabinet on the advice of the Government Leader and to act on its advice.

1970s - The Inuit Tapirisat of Canada raised the issue of division of the N.W.T. into Nunavut and Denendeh.

1980 - The "Drury Report," the Report of the Special Representative on Constitutional Development in the Northwest Territories, recommended further study of the consequences of division of the N.W.T. and drew attention to the connection with land claims negotiations.

1982 - The Minister of Indian Affairs and Northern Development announced approval in principle for the creation of Nunavut. Ottawa established funding for two regional groupings to work on agreement

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on the details of division: the Nunavut Constitutional Forum and the Western Constitutional Forum.

1982 - A referendum was held in the N.W.T. on division of the territory. Overall, division was supported by 56% of the voters, but that included 82% support in the eastern arctic (Nunavut) and much lower support for division in the proposed Denendeh territory, where turnout was also very low.

1987 - The NCF and WCF agreed in principle on division of the N.W.T. and the agreement was supported by the Minister. No agreement could be reached on resolution of the boundary. The proposed 1987 referendum on division had yet to be scheduled.

- The Meech Lake Constitutional Accord included provisions which would inhibit future acquisition of provincial status for the Yukon and Northwest Territories. The Accord also provided for a provincial say in Senate and Supreme Court appointments but gave no such voice to the territories. The territories are challenging the Accord before the courts. A Senate task force held hearings on the Accord in Yellowknife, Iqaluit and Whitehorse in October and November.

1988 - In February the Senate Task Force on the Meech Lake Constitutional Accord and the Yukon and Northwest Territories tabled its report, recommending substantial changes to the Accord to redress the grievances expressed by northern and aboriginal peoples.

- On 21 April the Senate returned the resolution on the Constitutional Accord to the House of Commons with amendments which incorporated the recommendations of the northern task force.

- During the spring the N.W.T. government reconstituted the NCF and WCF as one integrated constitutional forum with interim funding.

- On 22 June the House of Commons voted a second time in favour of the resolution as originally formulated, resulting in parliamentary approval of the Meech Lake Accord without including any of the Senate amendments.

- On 2 June the Supreme Court refused to hear the territories' appeal on the validity of the Meech Lake Accord.

- On 2 August 1988 Indian and Northern Affairs Canada released "A Northern Political and Economic Framework." The policy statement affirms the goals of establishing fully responsible northern governments, settling land claims, and promoting economic development.

- On September 5 the Prime Minister signed an agreement in principle with the Dene and Métis of the N.W.T. on a land claims settlement.

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- On 6 and 22 September, Ottawa signed energy agreements in principle with the N.W.T. and the Yukon respectively.

1989 - On 30 January the TFN asked for binding arbitration to define the land claim boundary with the Dene/Métis

- On 16 March the federal Cabinet ratified the Yukon land claim framework agreement.

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